

## EN BANC

[ G.R. No. 217456, November 24, 2015 ]

**MARILOU S. LAUDE AND MESEHILDA S. LAUDE, PETITIONERS,  
VS. HON. ROLINE M. GINEZ-JABALDE, PRESIDING JUDGE,  
BRANCH 74, REGIONAL TRIAL COURT OF THE CITY OF  
OLONGAPO; HON. PAQUITO N. OCHOA, JR., EXECUTIVE  
SECRETARY; HON. ALBERT F. DEL ROSARIO, SECRETARY OF THE  
DEPARTMENT OF FOREIGN AFFAIRS; HON. GEN. GREGORIO PIO  
P. CATAPANG, CHIEF OF STAFF OF THE ARMED FORCES OF THE  
PHILIPPINES; HON. EMILIE FE DELOS SANTOS, CHIEF CITY  
PROSECUTOR OF OLONGAPO CITY; AND L/CPL JOSEPH SCOTT  
PEMBERTON, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

Failure to meet the three-day notice rule for filing motions and to obtain the concurrence of the Public Prosecutor to move for an interlocutory relief in a criminal prosecution cannot be excused by general exhortations of human rights. This Petition fails to show any grave abuse of discretion on the part of the trial court judge. Furthermore, the accused, while undergoing trial and before conviction, is already detained in the Philippines in compliance with the obligations contained in the Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines Regarding the Treatment of United States Armed Forces Visiting the Philippines (Visiting Forces Agreement).

This is a Petition for Certiorari<sup>[1]</sup> under Rule 65, with prayer for the issuance of a writ of mandatory injunction filed by Marilou S. Laude and Mesehilda S. Laude (petitioners).

On October 11, 2014, Jeffrey "Jennifer" Laude (Jennifer) was killed at the Celzone Lodge on Ramon Magsaysay Drive in Olongapo City allegedly by 19-year-old US Marine L/CPL Joseph Scott Pemberton (Pemberton).<sup>[2]</sup> On October 15, 2014, a Complaint for murder was filed by Jennifer's sibling, Marilou S. Laude, against Pemberton before the Olongapo City Office of the City Prosecutor.<sup>[3]</sup> On October 22, 2014, Pemberton was detained in Camp Aguinaldo, the general headquarters of the Armed Forces of the Philippines.<sup>[4]</sup>

On December 15, 2014, the Public Prosecutor filed an Information for murder against Pemberton before the Regional Trial Court in Olongapo City.<sup>[5]</sup> The case was docketed as Case No. 865-14, and was raffled to Branch 74.<sup>[6]</sup> A warrant of arrest against Pemberton was issued on December 16, 2014.<sup>[7]</sup> Pemberton surrendered personally to Judge Roline M. Ginez-Jabalde<sup>[8]</sup> (Judge Ginez-Jabalde) on December 19, 2014, and he was then arraigned.<sup>[9]</sup>

On the same day, Marilou S. Laude filed an Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail and a Motion to Allow Media Coverage.<sup>[10]</sup> "The [M]otion was [scheduled] for hearing on December 22, 2014, at 2 p.m."<sup>[11]</sup> According to petitioners, they were only able to serve the Motion on Pemberton's counsel through registered mail.<sup>[12]</sup> In any case, they claim to have also "furnished a copy of the [M]otion personally ... at the hearing of the [M]otion."<sup>[13]</sup>

On December 23, 2014, Judge Ginez-Jabalde denied petitioners' Urgent Motion for lack of merit, the dispositive portion of which reads:<sup>[14]</sup>

Wherefore, the . . . *Urgent Motion [sic] to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail* [is] denied for utter lack of merit.<sup>[15]</sup> (Emphasis in the original)

Petitioners received a copy of the Order on January 5, 2015.<sup>[16]</sup> On January 9, 2015, petitioners filed a Motion for Reconsideration.<sup>[17]</sup> On February 18, 2015, Judge Ginez-Jabalde issued an Order denying petitioners' Motion for Reconsideration for lack of merit.

In a Resolution<sup>[19]</sup> dated April 21, 2015, respondents were required to file their Comment on the Petition. On June 5, 2015, public respondents, as represented by the Office of the Solicitor General, filed their (First) Motion for Extension of Time to File Comment<sup>[20]</sup> for 60 days. On the same day, Pemberton posted his Motion for Additional Time to File Comment<sup>[21]</sup> for 10 days. Pemberton filed his Comment by counsel on June 16, 2015,<sup>[22]</sup> while public respondents, through the Office of the Solicitor General, filed their Comment on September 23, 2015.<sup>[23]</sup>

Petitioners argue that "[Respondent Judge committed grave abuse of discretion tantamount to an excess or absence of jurisdiction when she dismissed the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of] Accused to the Olongapo City Jail [based] on mere technicalities[.]"<sup>[24]</sup> In particular, they argue that the three-day rule on motions under Rule 15, Section 4<sup>[25]</sup> of the 1997 Rules of Court is not absolute, and should be liberally interpreted when a case is attended by exigent circumstances.<sup>[26]</sup>

Petitioners advance that the rationale behind the three-day notice rule is satisfied when there is an opportunity to be heard, which was present in this case since Pemberton's counsel and the Public Prosecutor were present in the hearing of the two Motions filed by petitioners.<sup>[27]</sup> Petitioners allege that the court noted their attendance, and were able to make comments during the December 22, 2014 Motion hearing.<sup>[28]</sup> They assert that the rights of Pemberton were not compromised in any way.<sup>[29]</sup>

Petitioners also aver that the three-day notice rule should be liberally applied due to

the timing of the arrest and arraignment.<sup>[30]</sup> "The Urgent Motion was set for hearing on December 22, 2014[.]"<sup>[31]</sup> This date preceded a series of legal holidays beginning on December 24, 2014, where all the courts and government offices suspended their work.<sup>[32]</sup> Petitioners point out that a "murder trial is under a distinctly special circumstance in that Paragraph 6, Article V of the Visiting Forces Agreement. . . provides for [a] one-year trial period[,] after which the United States shall be relieved of any obligations under said paragraph[.]"<sup>[33]</sup> Petitioners had to file and set the Motion hearing at the earliest possible date.<sup>[34]</sup>

Petitioners further argue that Judge Ginez-Jabalde should not have dismissed the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail "considering that the Urgent Motion raised issues that are of transcendental importance and of primordial public interest."<sup>[35]</sup> Petitioners aver that under international human rights law, in particular the International Covenant on Civil and Political Rights and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, they have the right to access to justice,<sup>[36]</sup> which is "distinct from the power of the Public Prosecutors to prosecute [the] criminal case."<sup>[37]</sup>

Furthermore, petitioners advance that Philippine authorities ought to "have primary jurisdiction over [Respondent Pemberton's person while [he] is being tried [in] a Philippine Court[,] "<sup>[38]</sup> in accordance with Article V, paragraph (3)(b) of the Visiting Forces Agreement,<sup>[39]</sup> which states:

3. In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:

(a) **Philippine authorities shall have the primary right to exercise jurisdiction over all offenses committed by United States personnel** . . .

(Emphasis and underscoring in the original)<sup>[40]</sup>

Petitioners argue that the custody of Pemberton must be ordered transferred to the Olongapo City Jail, considering that the crime involved is murder, which is non-bailable.<sup>[41]</sup> They aver that it is unconstitutional to refuse to put him "in the custody of Philippine jail authorities[.]" as such refusal "undermines the Constitutional Powers of [the Court] to hear a jurisdictional matter brought before it"<sup>[42]</sup> and to promulgate rules for the practice of law.<sup>[43]</sup> Petitioners argue that even though the Visiting Forces Agreement gives the United States the "sole discretion" to decide whether to surrender custody of an accused American military personnel to the Philippine authorities, "the rule is that . . . the Court [still] has control over any proceeding involving a jurisdictional matter brought before it, even if it may well involve the country's relations with another foreign power."<sup>[44]</sup>

As for the nonconformity of the Public Prosecutor, petitioners argue that the Public Prosecutor's refusal to sign the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail rendered the

requirement for conformity superfluous.<sup>[45]</sup> Petitioners allege that the Public Prosecutor's act is contrary to Department of Justice Secretary Leila M. De Lima's (Secretary De Lima) position on the matter.<sup>[46]</sup> They quote Secretary De Lima as having said the following statement in a news article dated December 17, 2014:

The Philippines will now insist on the custody (of Pemberton) now that the (case) is filed in court and especially since the warrant of arrest has been issued," De Lima told reporters in an ambush interview.<sup>[47]</sup>

Petitioners also quoted Secretary De Lima as having stated in another news article dated December 18, 2014 the following:

Justice Secretary Leila De Lima stressed that Pemberton should be under the custody of Philippine authorities, following the filing of charges.

"There is also a provision in the Visiting Forces Agreement that, in cases of extraordinary circumstances, the Philippine government can insist on the custody and for me, there are enough such circumstances, such as cruelty and treachery, that justified the filing of the murder and not homicide," De Lima said.<sup>[48]</sup>

The contrary manifestations made by Secretary De Lima, according to petitioners, meant that "[t]he conformity of the Public Prosecutor . . . is a mere superfluity"<sup>[49]</sup> and was meant "to deny [petitioners' 'quest for justice[.]'"<sup>[50]</sup>

Due to the nature of the case, petitioners pray in this Petition that procedural requirements be set aside.<sup>[51]</sup>

In his Comment dated June 16, 2015, Pemberton argues that Judge Ginez-Jabalde did not commit grave abuse of discretion in denying the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail since petitioners violated the three-day notice rule and failed to secure the conformity of the Public Prosecutor assigned to the case.<sup>[52]</sup> He claims that he "was not given an opportunity to be heard"<sup>[53]</sup> on petitioners' Motion.

In his counterstatement of facts, Pemberton avers that he voluntarily surrendered to the Regional Trial Court, Branch 74, on December 19, 2014.<sup>[54]</sup> On the same day, Marilou S. Laude filed an Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail, and setting the Motion hearing for December 22, 2015, but did not obtain the Public Prosecutor's conformity.<sup>[55]</sup> Marilou S. Laude also failed to personally serve a copy of the Urgent Motion on Pemberton at least three days prior to the hearing thereof.<sup>[56]</sup>

Pemberton further avers that on December 22, 2014, Judge Ginez-Jabalde heard the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail and a Motion to Suspend the Proceedings.

[57] Counsel for Pemberton was in court to attend the hearing for the Motion to Suspend the Proceedings, but did not have knowledge of the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail filed by Marilou S. Laude.[58] Counsel for Pemberton received a copy of the Urgent Motion only "a few minutes"[59] before it was to be heard.[60]

On December 23, 2014, Judge Ginez-Jabalde denied Marilou S. Laude's Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail for being devoid of merit.[61] Marilou S. Laude filed a Motion for Reconsideration on January 9, 2015,[62] without conformity of the Public Prosecutor.[63] On January 20, 2015, Pemberton filed his *Ad Cautelam* Opposition [To Private Complainant's Motion for Reconsideration], arguing that Judge Ginez-Jabalde correctly denied Marilou S. Laude's Urgent Motion due to the latter's "failure to comply with settled procedure regarding hearing of motions[.]" [64] Pemberton further argues that the custody over him "rightfully remain[ed] with the [United States] authorities. . . ." He cites Section 6 of the Visiting Forces Agreement, which provides that the "custody of any United States personnel over whom the Philippines is to exercise jurisdiction shall immediately reside with United States military authorities, if they so request, from the commission of the offense, until completion of all judicial proceedings." [65]

Pemberton further argues in his Comment that the presence of his counsel during the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail hearing did "not equate to an opportunity to be heard as to satisfy the purpose of the three-day notice rule." [66] Citing *Preysler, Jr. v. Manila Southcoast Development Corporation*, [67] *Cabrera v. Ng*, [68] and *Jehan Shipping Corporation v. National Food Authority*, [69] Pemberton avers that an opposing party is given opportunity to be heard when he is "afforded sufficient time to study the motion and to meaningfully oppose and controvert the same." [70] Even though his counsel was able to orally comment on the Urgent Motion, [71] Pemberton was deprived of any meaningful opportunity to study and oppose it, [72] having been furnished a copy a few minutes before the hearing. [73] Marilou S. Laude also failed to provide "justifiable reason for . . . failure to comply with the three-day notice that would warrant a liberal construction of the rules." [74]

Pemberton likewise argues that Marilou S. Laude, being only the private complainant, lacks the legal personality to file the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail and the subsequent Motion for Reconsideration "without the conformity of the Public Prosecutor." [75] Quoting Rule 110, Section 5 [76] of the Revised Rules of Criminal Procedure, Pemberton states that the Public Prosecutor's lack of consent "rendered the Urgent Motion a mere scrap of paper." [77] He adds that the defect is "not a mere technicality[.]" [78]

Pemberton also argues that Marilou S. Laude cannot rely on the alleged statements of Secretary De Lima for the following reasons: [79] First, Secretary De Lima did not direct the Olongapo City Office of the City Prosecutor to give its approval to the Urgent Motion and Motion for Reconsideration; [80] second, Secretary De Lima did